(Spl.-H.C.A.S.,C.D.,78-e)

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF BOMBAY AT GOA
APPELLATE SIDE

CIVIL REVISION APPLICATION NO. 6 OF 2004

Office Note, Office Memoranda of Quorum, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

Shri M. S. Usgaokar, Senior Advocate with Shri A.J. Kenkre, advocate for the petitioners.

Shri M. S. Joshi, advocate for the respondent.

CORAM : D. G. KARNIK, J.

DATE : 22nd March, 2004

P.C.:

Heard learned counsel for the parties. This revision is directed against an order of the trial Court passed below Exhibit 26/D, rejecting the defendants'/petitioners' application for rejection of the plaint under Order 7 Rule 11 of the Code of Civil Procedure.

Learned counsel for the defendants submitted that the suit was barred by limitation and, as such, the plaint ought to have been rejected under Clause (d) of Rule 11 of Order 7 of the Code of Civil

Procedure read with Clause (e) of Rule 1 of Order 7 of the Code of Civil Procedure. For considering the rejection of plaint at the threshold, one has to look to the averments made in the plaint and not to the defence taken, or averments made in the application for rejection of the plaint.

2. Though the agreement which has given rise to this suit was entered into on 26th May, 1993, the plaintiff/respondent has specifically averred that the agreement was subject to the approval of the Government of India (Ministry of Industry) and the Reserve Bank of India. The approval from the Government of India was received on 26th August, 1993, but it was modified on 10th February, 1994, 20th September, 1994 and 2nd February, 1995. The copies of the communication are annexed to the plaint. In paragraph 18 of the

plaint, the plaintiff/respondent has specifically averred that the period of technical collaboration of the agreement was stipulated to be eight years from the date of agreement or five years from the date of commencement of commercial production. Thus, assuming that the agreement became effective on the first sanction of the Government of India on 26th August, 1993, the agreement was to remain valid for a period of eight years, i.e. till August, 2001, as averred in the plaint. In paragraph 55 of the plaint, the plaintiff has averred that the cause of action arose in May, 2000. These facts are to be taken at the face value specially when the petitioners/defendants are yet to file the written statement.

3. In the circumstances, it cannot be said merely by looking to the averments in the plaint, that the suit is barred by limitation. Hence, the revision application is

dismissed summarily.

D. G. KARNIK, J.

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